

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JAMES E. DAVIS, INDIVIDUALLY AND
FRANCOIS KOHLMAN, INDIVIDUALLY AND
ON BEHALF OF ALL OTHERS SIMILARLY
SITUATED

PLAINTIFF

VS.

CAUSE NO. 3:11-CV-093-MPM-SAA

ACA FINANCIAL GUARANTY
CORPORATION, and
JOHN DOES One through Ten

DEFENDANTS

**PLAINTIFFS' RESPONSE IN OPPOSITION TO
DEFENDANT'S MOTION FOR HEARING ON ITS MOTION TO DISMISS**

Plaintiffs' file this Response in Opposition to Defendant's Motion for Hearing on Its Motion to Dismiss, and in support, state as follows:

In its Motion for Hearing on its Motion to Dismiss ("Motion for Hearing") and in its Motion to Dismiss Plaintiff's Amended Complaint and to Stay All Class Certification Proceedings (the "Motion to Dismiss"), the Defendant has repeatedly stated that "the facts of this case are simple and straightforward". [Docs. 23, 24, 37]. The Plaintiffs agree. Despite the "straightforward" factual and legal arguments made by the parties in their pleadings, the Defendant seeks to unnecessarily prolong this matter and delay the orderly process of this class action.

The Complaint in this action was filed on July 15, 2011, eight (8) months ago. To date, the Defendant has avoided discovery by filing 12(b)(6) motions which are without merit and should be denied. The Plaintiffs desire to move this litigation along as swiftly and efficiently as possible. The Plaintiffs have full faith in this Court to render the proper

decision on the briefings of the parties without more argument or interference. Should the Court desire oral argument, the Plaintiffs respectfully request that the hearing be scheduled to take place expeditiously.

WHEREFORE, the Plaintiffs request that this Court deny ACA's Motion for Hearing and issue an order denying ACA's Motion to Dismiss based on the briefings filed by the parties.

RESPECTFULLY SUBMITTED, this 3rd day of April, 2012.

/s/ Jesse Mitchell, III

Jesse Mitchell, III (MS Bar No. 103020)

William M. Quin II (MS Bar No. 10834)

O. Stephen Montagnet III (MS Bar No. 10049)

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CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Jesse Mitchell, III
JESSE MITCHELL, III